

# EXHIBIT 10

Steven J. Fox

March 8, 2006

Boston, MA

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

NO. 01CV12257-PBS

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In re: PHARMACEUTICAL )

INDUSTRY AVERAGE WHOLESALE )

PRICE LITIGATION )

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)

THIS DOCUMENT RELATES TO: )

ALL ACTIONS )

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)

DEPOSITION of STEVEN J. FOX,  
called as a witness by and on behalf of the Johnson  
& Johnson, pursuant to the applicable provisions of  
the Federal Rules of Civil Procedure, before P.  
Jodi Ohnemus, Notary Public, Certified Shorthand  
Reporter, Certified Realtime Reporter, and  
Registered Merit Reporter, within and for the  
Commonwealth of Massachusetts, at the offices of  
Robins, Kaplan, Miller & Ciresi, L.L.P., 800  
Huntington Avenue, Boston, Massachusetts, on  
Wednesday, 8 March, 2006, commencing at 9:35 a.m.

Henderson Legal Services  
(202) 220-4158

bdd57108-7753-44c2-9abc-fb5a39ba25dd

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1           A.     When I go to negotiate a car and I look  
2     at the sticker price, I know that I'm not going to  
3     pay the sticker price, but there is a relationship  
4     between the price I pay and that sticker price,  
5     otherwise the sticker price has no meaning.

6           I then go to an invoice price. That  
7     invoice price then gives me some basis of  
8     comparison. So, I'm saying AWP is the basis of  
9     comparison. That number is a number that --  
10    that's an industry number. That is a number that  
11    -- I would have no reason to argue with that  
12    number, because that number is the basis of  
13    comparison.

14           Again, if it was -- you earlier asked  
15    me, Well, why didn't we discount? If we -- if we  
16    thought that there was an unrealistic set between  
17    that and some other price, we would have  
18    discounted it by some other number, by 20 percent,  
19    by 25 percent, by 30 percent.

20           Q.     Uh-huh. Well, let me focus my question  
21    then. When you say it has some relationship to  
22    the price that you pay, you're saying it has some

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1 assumption, then what's your basis for thinking  
2 the differential would be reasonable?

3 MR. COCO: Objection.

4 A. Again, just like -- I mean, for services  
5 that a plan reimburses, if we start with a number,  
6 and we assume that there's a reasonable margin  
7 built into that, again, standard with our  
8 methodology, standard with -- with the industry, I  
9 would not expect there to be an unrealistic  
10 relationship between that number and a number that  
11 a physician is paying to get that, implicitly  
12 implying that when they bill the payer, that there  
13 is lots of money to be paid.

14 Q. Well, when you said you assumed there's  
15 a reasonable margin --

16 A. Uh-huh.

17 Q. -- as we discussed earlier, when you  
18 used the term "margin," you're referring to the  
19 difference between AWP and acquisition, right?

20 A. Yes.

21 MR. COCO: Objection.

22 Q. So, when you say, "reasonable margin,"

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1 you're saying you expected there to be a  
2 reasonable difference between the AWP and the  
3 acquisition, right?

4 MR. COCO: Objection.

5 A. If any.

6 Q. Okay. And so, when you say a reasonable  
7 -- and you don't know what the physician is paying  
8 to acquire drugs, right? You don't know what the  
9 specific number is?

10 A. That's right.

11 Q. Okay. But you do know what the AWP is,  
12 'cause that's published.

13 MR. COCO: Objection.

14 Q. Right?

15 A. I don't particularly -- I don't  
16 personally, but yes.

17 Q. You understand that AWP's are published.

18 A. Yes. Correct.

19 Q. So, when you assume that -- there to be  
20 a reasonable margin, and the only information that  
21 you have is the AWP, aren't you axiomatically  
22 taking the position that AWP provides some

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1 indicator of the cost of the drug to physicians?

2 MR. COCO: Objection.

3 A. I don't -- I mean, that's a level of  
4 detail that I don't get involved in. If there  
5 were no other factors involved, but clearly the  
6 physician -- AWP is the -- is a price the  
7 physician is paying for a drug. The drug is  
8 supplied. The drug is billed to the insurer.

9 Q. You said AWP is a price a physician is  
10 paying?

11 A. AWP is an index. It's a price. It's  
12 out there. It -- I don't know if that's the price  
13 the physician is paying. I'm -- I don't know  
14 that. There is a -- there is -- clearly, there is  
15 an AWP price that is set by the industry as the  
16 wholesale price. There is then a price that the  
17 physician pays to get that drug, and there is then  
18 a price that the insurer, some third party, pays  
19 the physician for administering that drug. The  
20 numbers can't all be the same.

21 Q. Let me ask you this: Here's a report  
22 from 1992 which says, "AWP is not a reliable

# EXHIBIT 11

00001

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3

4  
5 -----x  
6 IN RE PHARMACEUTICAL INDUSTRY  
7 AVERAGE WHOLESALE PRICE LITIGATION,  
8 -----x  
9

10 Civil Action: 01-CV-12257-PBS  
11

12 July 28, 2004  
13 9:40 a.m.  
14

15 H I G H L Y C O N F I D E N T I A L  
16

17 30(b)(6) Deposition of THOMAS HIRIAK,  
18 held at the offices of Patterson Belknap  
19 Webb & Tyler, before David Henry, a  
20 Certified Shorthand Reporter and Notary  
21 Public of the State of New York.  
22



00252

1 Q. But even if all these things were  
2 not captured, are you aware of a report that  
3 captured most of these things? I  
4 understand -- I'm not saying that this has  
5 to be the only definition that was operating  
6 from 1991 until now as to how net price was  
7 being calculated for Procrit, but were there  
8 reports that attempted to capture this  
9 concept prior to 2001 that were created by  
10 the finance department?

11 MR. SCHAU: Object to form.

12 A. Yeah, the concept of ASP, no.  
13 But if -- again --

14 Q. You are getting -- I think you  
15 are getting caught up in the ASP. I'm not  
16 talking about the concept of ASP exclusively  
17 with regard to average selling price,  
18 different companies call it different things  
19 prior, or other than average selling price.  
20 Is there something that this was called or  
21 something similar that was calculated that  
22 was called something over than average

00253

1 selling price in order to keep track and  
2 monitor what the net price of the drug was  
3 during the lifespan of the drug?

4 A. Yes.

5 Q. And what reports was that  
6 information contained in?

7 A. Again, there are finance reports,  
8 looking at gross to net, what our net  
9 purchases are. I don't know if it has a  
10 specific name, or I'm not aware of any name  
11 for that report.

12 Q. Was that information subsumed  
13 into another type of report, like a P&L?

14 A. Well, obviously performance is  
15 measured at Ortho Biotech. I mean, we do  
16 have a forecast, we are measured on that  
17 forecast by J&J. We measure performance on  
18 a quarterly basis, so yeah, I'm sure it all  
19 rolls up in into the performance of Ortho  
20 Biotech during a calendar year.

21 Q. And is that broken down by drug  
22 within Ortho Biotech?

00254

1 A. Well, the performance of the  
2 company is, the company itself. But I'm  
3 sure that this type of information is  
4 available by drug, yes.

5 Q. Okay, and that information has  
6 always been available during the lifespan of  
7 this product, correct?

8 A. As far as I know, yes.

9 Q. Okay. Do you know who that data  
10 was circulated to, data showing the net  
11 price of the drug during the lifespan of the  
12 drug?

13 MR. SCHAU: Object to form.

14 Q. You've stated that these reports  
15 were --

16 A. I would say finance and senior  
17 management.

18 Q. Okay, do you know what they did  
19 with these reports?

20 A. No.

21 Q. I thought you just testified they  
22 were trying to engage the performance, among

00255

1 other things, they tried to gauge the  
2 performance of the drug, is that correct?

3 A. Yes.

4 Q. Anything else they would have  
5 done with the reports?

6 A. No.

7 Q. Is there some other report that  
8 regularly reports the ASP?

9 A. Ken Nelson right now develops a  
10 report that calculates ASP. That's the only  
11 report I've seen that actually calculates  
12 ASP.

13 Q. And how often was that  
14 calculated?

15 A. Well again, right now it's on an  
16 ad hoc basis based upon internal analysis.  
17 If Medicare does adopt ASP, then I know that  
18 it will be on a much more regular basis, and  
19 I think it's done at that time on a  
20 quarterly basis if I'm not mistaken.

21 Q. Can you tell me what other  
22 financial reports OBI regularly creates?

# EXHIBIT 12

IN RE: PHARMACEUTICAL INDUSTRY ) HIGHLY CONFIDENTIAL  
AVERAGE WHOLESALE PRICE ) MDL NO. 1456  
LITIGATION ) MASTER FILE NO.  
 ) 01-CV-12257-PBS

Videotape deposition of DAVID R. BRENNAN taken pursuant to notice at the offices of AstraZeneca, 1800 Concord Pike, Wilmington, Delaware, beginning at 10:00 a.m., on Tuesday, February 14, 2006, before Eleanor J. Schwandt, Registered Merit Reporter and Notary Public.

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1 selling Zoladex to doctors for, right?

2 MR. WISE: Object to the form of the  
3 question.

4 A. I mean, if there is confidentiality  
5 associated with it, then we certainly wouldn't be  
6 the ones to do it. But I think everybody was aware  
7 that there were discounts from AWP and from WAC.

8 Q. Everyone was aware. The consumer getting  
9 a shot of Zoladex was aware of the discount?

10 MR. WISE: Object to the form of the  
11 question.

12 Q. Yes or no?

13 A. I don't know the answer to that.

14 Q. Do you think so? Do you think so? Do you  
15 think the consumer getting a shot of Zoladex in his  
16 abdomen knew that the percentage of the co-pay he  
17 had to pay was higher than it would have been had  
18 the reimbursement been based on the actual  
19 acquisition cost of the drug rather than AWP? Do  
20 you think the consumer knew that?

21 A. I don't know. I honestly can't say I  
22 know. I mean, I think that there was incentive in

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1 different, you know, parties that are involved in  
2 all of this. It is not a straightforward, one-size-  
3 fits-all system that we operate in. So I can't --

4 Q. I grant you --

5 A. So it is difficult for me to say what is  
6 fair, what is not fair.

7 I mean, within the context of the system,  
8 we operated with the intention to make sure there  
9 was access to our products. And with Zoladex in  
10 particular, it was to try to have a lower priced  
11 product, competitively, to try to make it more  
12 attractive to be used, because there were a lot of  
13 similarities between our product and the competitive  
14 product. So...

15 Q. My question to you is this: You have a  
16 consumer getting a shot of Zoladex in the abdomen.  
17 And the reimbursement for the drug, for that shot,  
18 is being based on AWP, which is significantly higher  
19 than the doctor's actual acquisition cost of the  
20 drug. And AstraZeneca has in place no mechanism to  
21 tell the consumer what that doctor paid for the  
22 drug. He just has to pay his portion of the co-pay.

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1 the system. There was co-pays in the system. It is  
2 difficult to say, for me to say that I know exactly  
3 what somebody who was getting a shot would know.

4 Q. Was there ever an effort made by  
5 Astra/Zeneca to let the consumer know exactly what  
6 it was that their doctor purchased the drug for?

7 A. Not that I am aware of.

8 Q. Just out of curiosity, do you think it is  
9 fair for somebody to be reimbursing at a level that  
10 is much higher than the acquisition cost for the  
11 drug?

12 MR. WISE: Object to the form of the  
13 question.

14 Q. And not know it?

15 MR. WISE: Object to the form of the  
16 question.

17 Q. Is that fair?

18 MR. WISE: To whom? For what purpose?

19 Q. To the reimbursing, to the person paying  
20 for the drug?

21 A. I think that the system that's in place is  
22 very complex, and that it involves a number of

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1 Is that right?

2 MR. WISE: Object to the form of the  
3 speech, and the question.

4 Q. Is that right?

5 A. We don't -- I mean, it is not our practice  
6 to inform consumers on prices of our products. The  
7 prices that are paid in the market are quite  
8 variable depending on the circumstances, the  
9 reimbursement systems, etcetera. So there isn't a  
10 single price point that one could say, here is what  
11 the price should be. Those factors are determined  
12 by the market.

13 Q. But given the situation where the AWP is  
14 significantly higher, and the reimbursement is based  
15 upon AWP, and the consumer's co-payment is based  
16 upon AWP, is it fair for that person not to know  
17 what the doctor's actual acquisition cost of the  
18 drug is?

19 MR. WISE: Same objection to the form.

20 A. I'm not going to comment on it. I mean, I  
21 think, as I said, the complexity of the system  
22 doesn't expect us to be providing that kind of

# EXHIBIT 13



## **Intron A for Superficial Bladder Carcinoma**

**Intron A (IFN a-2b) 100 million IU once weekly for 12 weeks and then 50miu once a month for one year.**

Price advantages in setting up Direct Account through Schering representative.

Net Direct price	(Amount reimbursed) J9214 code
50 miu vial = \$471.01	50miu of Intron at 95% AWP = \$536.95

$\$536.95 - \$471.01 = \$65.94$  in profit for every 50miu vial used

**First 12 weeks of therapy is 100miu weekly**

Net Direct price	AWP (reimbursement)
$\$942.02 \times 12\text{wks} = \$11304.24$	$\$1073.90 \times 12\text{wks} = \$12886.80$
Difference of \$1582.56 in profit of drug.	

50miu once a month for 12 mths =	$\$471.01 \times 12\text{mths}$	$\$5652.12$
	$\$536.95 \times 12\text{mths}$	$\$6443.40$
	Difference of	$\$791.28$ (profit)

Total saving(profit) of Intron A when purchasing direct for bladder cancer is **\$2373.84**

### **Urology Billing Codes**

**J9214** per one million units(MU) of drug  
**51720\*\*** infusion directly to bladder  
**99211 - 99215** for the visit, depending on the services rendered

**\*\*** for intra-bladder infusions. You may not bill for a catheterization or irrigation with this service.

# EXHIBIT 14

### AWP (Ain't What's Paid)

#### Origin

Before the 1980's, there were many pharmaceutical companies, who sold to many wholesalers and many retailers. Since the wholesalers were regional in nature, it was difficult to ascertain the "average" price manufacturers sold product for. Most manufacturers sold through wholesalers only, but some did sell direct to retailers. The price manufacturers sold product to wholesalers for was termed Wholesale List Price or "WLP". On average, wholesalers marked WLP up 20% from manufacturers selling product to wholesalers only, when selling product to retail pharmacies. Wholesalers marked-up product 25% from manufacturers who also had direct pharmacy sales. As an example, Bristol-Myers did not deal in direct sales, hence had a 20% markup, while Squibb's direct policy caused a 25% markup, also known as "WLP to AWP spread".

A pricing service, FirstDataBank, found a market niche in surveying wholesalers and retailers for the average price wholesalers sold product to pharmacies for, hence "Average Wholesale Price." They published this information in such sources as Redbook and PriceAlert.

Over the past 20 years, much consolidation has occurred within the pharmaceutical wholesale and retail supply chain. Now, major wholesalers and pharmacy chains are able to negotiate much better pricing from each other, as well as from manufacturers. Wholesalers and retailers now work on slim margins and mark-ups from WLP are in the 2% - 4% range. But, FirstDatabank has maintained the 20% - 25% AWP markup legacy and continues to publish this artificially inflated number. This markup is applied to new and old products based on the manufacturer assigned to the product labeler code.

#### Current Usage

While pharmacies and payors both know that AWP is artificially inflated, it is the only easily obtained, published price source. Therefore, reimbursement formulas are still based on AWP, with a discount subtracted from it. An example of how a MCO reimburses a pharmacy might be:  $AWP - 13\% + \text{a filling fee of } \$2 \text{ less the co-pay that has already been paid by the customer when picking up the prescription}$ . In simple terms:

$AWP - \text{discount} + \text{fee} - \text{copay}$

The discount level depends on the payor type and the contract entered into by payor and pharmacy.

In addition, pharmacies often use AWP as a benchmark when determining how much to charge a cash paying customer for a prescription.

Aside from pharmaceutical distribution channels, AWP is used by many when providing analysis on drug pricing. Many newspaper articles and invest bank research notes use AWP as a tracking variable. Since it is a published number, AWP is the logical variable to track when performing price increase analysis, as so many publications and advocacy groups do.

# EXHIBIT 15

**PHARMACEUTICAL SALES AGREEMENT**

AGREEMENT made this 15 day of June, 1992 by and between CareMark, residing at 455 Knightsbridge Parkway, city of Lincolnshire, State of Illinois, hereinafter called the BUYER; and ORTHO BIOTECH INC. residing at Route 202, P.O. Box 300, Raritan, New Jersey 08869-0602, hereinafter called the SELLER.

WITNESSETH that in consideration of the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

**GENERAL TERMS AND CONDITIONS**

1. The term of the agreement shall begin on the date set out above and shall continue through March 31, 1997. It covers the purchase by BUYER or its members of PROCRTIT brand Epoetin alfa.
2. SELLER specific PROCRTIT® pricing and conditions are listed on an attachment.
3. Each member of BUYER that wishes to take advantage of the PROCRTIT product pricing set forth in the attachment (a "Participating Member") must purchase all of its requirements of recombinant human erythropoietin ("r-HuEPO") (or equivalent) as PROCRTIT brand Epoetin alfa, and may not substitute, dispense or administer equivalents for such product except for any such r-HuEPO required for patients on dialysis.
4. (2) BUYER represents that SELLER products are dispensed through CareMark ~~wholly~~ owned and operated ~~hospital-based~~ pharmacies solely ~~for inpatients~~ to outpatients as an original take-home prescription, and to institution staff, employees, and students for their own dependents' use and not for resale or competition with private sector pharmacies. If SELLER shall reasonably determine that BUYER is using the products for any other purpose, it shall have the right to immediately terminate this agreement with respect to such BUYER and to refuse to accept any further orders under this agreement from or on behalf of such BUYER.
5. All orders for PROCRTIT brand Epoetin alfa by BUYER shall be subject to availability of the product from SELLER. If the product is unavailable from SELLER in quantities necessary to meet BUYER's reasonable requirements, BUYER may purchase a substitute product from another vendor, but only so long as SELLER is able to supply neither the product nor a

substantially equivalent product.

6. SELLER agrees to indemnify, defend and hold harmless the BUYER from and against any liabilities, cost, expenses or damages for personal injury to third party allegedly caused by use of SELLER's product and not due to the negligence or willful misconduct of BUYER, its members, their agents or employees, or any third party, provided that the SELLER shall control and direct any litigation for which indemnification is sought hereunder including but not limited to the selection of counsel and further provided that BUYER shall cooperate with SELLER in the defense of such litigation and SELLER shall have the exclusive right to compromise or settle any claim arising out of such litigation.
7. Terms and conditions of this agreement are confidential. BUYER will contact SELLER first before initiating any press releases or other publicity regarding any content of this contract. Specific information regarding the content of this agreement or its attachments will be held in confidence by the BUYER's employees who have direct responsibility for the decision to implement this contract and those who are responsible for abiding by the terms and conditions.

#### **TERMINATION**

8. SELLER reserves the unilateral right to cancel this agreement upon 30 days' written notice in the event of a breach by BUYER or any of the terms and conditions hereof, provided that such breach shall not have been remedied within such 30-day period.

**AUDIT**

9. Seller shall have the right upon reasonable notice during regular business hours to audit the books and records of BUYER and its Participating Members to determine whether BUYER is in compliance with BUYER's obligations hereunder.

ORTHO BIOTECH INC.

By Bradley R. Kozar  
Bradley R. Kozar  
Director, Institutional  
and Managed Healthcare

CareMark

By Tim Joseph  
Tim Joseph

**HIGHLY CONFIDENTIAL**

**MDL-OBI00054911**

**SPECIFIC CONDITIONS AND PRICING**

1. All prices in this attachment on products manufactured or distributed by SELLER will be protected for the life of the contract.
2. ORTHO BIOTECH INC. provides a Cost Sharing Program (CSP) the details of which are outlined in the enclosed brochure.
3. ORTHO BIOTECH INC. provides a Reimbursement Support Program called PROCritLine\*, the details of which are outlined in the enclosed brochure.
4. ORTHO BIOTECH INC., through Roche Biomedical Laboratories, will pay for an EPO levels test which is a clinigen EIA assay. This includes all shipping charges, as well as the expense of the assay.
5. Contract Pricing is available through PRIME VENDORS only.
6. ORTHO BIOTECH INC. agrees to pay CareMark a Performance Allowance of 2% of net purchases of products under this agreement, paid quarterly, and adjusted annually.
7. ORTHO BIOTECH INC. will extend to CareMark the Early Purchase Program. Through this program, you will receive a **total 10% discount** on all purchases of PROCrit for a 45 day period, commencing with your first order. Submit your invoices to ORTHO BIOTECH INC and you will receive a rebate check for the additional 3%, for a **total 10%**.



CAREMARK  
455 KNIGHTSBRIDGE PARKWAY  
LINCOLNSHIRE, ILLINOIS 60069

YEAR 1 (7%)

<u>PRODUCT</u>	<u>NDC #</u>	<u>Price/Pkg</u>	<u>Price/Case</u>
PROCRIT (Epoetin alfa) 2,000 u/ml	0062-7402-01	111.60	446.40
PROCRIT (Epoetin alfa) 3,000 u/ml	0062-7405-01	167.40	669.60
PROCRIT (Epoetin alfa) 4,000 u/ml	0062-7400-03	223.20	892.80
PROCRIT (Epoetin alfa) 10,000 u/ml	0062-7401-03	530.10	2,120.40

YEAR 2 (7.5%)

<u>PRODUCT</u>	<u>NDC #</u>	<u>Price/Pkg</u>	<u>Price/Case</u>
PROCRIT (Epoetin alfa) 2,000 u/ml	0062-7402-01	111.00	444.00
PROCRIT (Epoetin alfa) 3,000 u/ml	0062-7405-01	166.50	666.00
PROCRIT (Epoetin alfa) 4,000 u/ml	0062-7400-03	222.00	888.00
PROCRIT (Epoetin alfa) 10,000 u/ml	0062-7401-03	527.25	2,109.00

YEAR 3 (8%)

<u>PRODUCT</u>	<u>NDC #</u>	<u>Price/Pkg</u>	<u>Price/Case</u>
PROCRIT (Epoetin alfa) 2,000 u/ml	0062-7402-01	110.40	441.60
PROCRIT (Epoetin alfa) 3,000 u/ml	0062-7405-01	165.60	662.40
PROCRIT (Epoetin alfa) 4,000 u/ml	0062-7400-03	220.80	883.20
PROCRIT (Epoetin alfa) 10,000 u/ml	0062-7401-03	524.40	2,097.60

- . Cost Sharing Program (Attached)
- . EPO Levels Test through Roche Biomedical Laboratories

**HIGHLY CONFIDENTIAL**

**MDL-OBI00054913**

# EXHIBIT 16

PHARMACEUTICAL SALES AGREEMENT  
January 7, 1993

AGREEMENT made this 12 day of APRIL, 1993 by and between Stadtlanders, residing at 600 Penn Center Boulevard, City of Pittsburgh, State of Pennsylvania, hereinafter called the BUYER; and Ortho Biotech Inc., residing at Route 202, P.O. Box 700, Raritan, New Jersey 08869-0670, hereinafter called the SELLER.

WITNESSETH that in consideration of the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

GENERAL TERMS AND CONDITIONS

1. The term of the agreement shall begin on the date set out above and shall continue through January 31, 1998. It covers the purchase by BUYER or its members of PROCRT brand Epoetin alfa.
2. SELLER specific PROCRT® pricing and conditions are listed on an attachment. BKK
3. Each member of BUYER that wishes to take advantage of the PROCRT product pricing set forth in the attachment (a "Participating Member") ~~must purchase~~ <sup>may</sup> ~~its~~ <sup>By purchasing</sup> requirements of recombinant human erythropoietin ("r-HuEPO") (or equivalent) as PROCRT brand Epoetin alfa, and may not substitute, dispense or administer equivalents for such product except for any such r-HuEPO required for patients on dialysis. BKK
4. BUYER represents that SELLER products are dispensed through Stadtlanders ~~closed system~~ <sup>mail</sup> service operation and not for resale or competition with private sector pharmacies. If SELLER shall reasonably determine that BUYER is using the products for any other purpose, it shall have the right to immediately terminate this agreement with respect to such BUYER and to refuse to pay any further rebates under this agreement from or on behalf of such BUYER. BKK
5. All orders for PROCRT brand Epoetin alfa by BUYER shall be subject to availability of the product from SELLER. If the product is unavailable from SELLER in quantities necessary to meet BUYER's reasonable requirements, BUYER may purchase a substitute product from another vendor, but only so long as SELLER is able to supply neither the product nor a substantially equivalent product.

APR 14 1993

HIGHLY CONFIDENTIAL

MDL-OBI00055078

Stadtlanders  
Pittsburgh, PA  
January 7, 1993  
Page 2

6. SELLER agrees to indemnify, defend and hold harmless the BUYER from and against any liabilities, cost, expenses or damages for personal injury to third party allegedly caused by use of SELLER's product and not due to the negligence or willful misconduct of BUYER, its members, their agents or employees, or any third party, provided that the SELLER shall control and direct any litigation for which indemnification is sought hereunder including but not limited to the selection of counsel and further provided that BUYER shall cooperate with SELLER in the defense of such litigation and SELLER shall have the exclusive right to compromise or settle any claim arising out of such litigation.
7. Terms and conditions of this agreement are confidential. BUYER will contact SELLER first before initiating any press releases or other publicity regarding any content of this contract. Specific information regarding the content of this agreement or its attachments will be held in confidence by the BUYER's employees who have direct responsibility for the decision to implement this contract and those who are responsible for abiding by the terms and conditions.

**TERMINATION**

8. SELLER reserves the unilateral right to cancel this agreement upon 30 days' written notice in the event of a breach by BUYER on any of the terms and conditions hereof, provided that such breach shall not have been remedied within such 30-day period.

Stadtlanders  
Pittsburgh, PA  
January 7, 1993  
Page 3

AUDIT

9. Seller shall have the right upon reasonable notice during regular business hours to audit the books and records of BUYER and its Participating Members to determine whether BUYER is in compliance with BUYER's obligations hereunder.

Ortho Biotech Inc.

Bradley K. Kozar  
Bradley K. Kozar  
Director, Institutional  
and Managed Healthcare

Stadtlanders

Joseph Haver for Stadtlanders  
Joseph Haver R.Ph., M.S.

4-12-93  
Date

SPECIFIC CONDITIONS AND PRICING

Stadtlanders  
Pittsburgh, PA 15238  
January 7, 1993

1. All prices in this attachment on products manufactured or distributed by SELLER will be protected for the life of the contract.
2. A Cost Sharing Program (CSP) and Financial Assistance Program (FAP) is provided (details attached).
3. Ortho Biotech Inc. agrees to pay a 2% Performance Allowance on all purchases of PROCRI<sup>®</sup>, on a quarterly basis.
4. A 4% rebate will be paid to Stadtlanders by Ortho Biotech Inc. annually.
5. Ortho Biotech Inc. is extending additional annual rebates as follows:
  - On purchases of \$500,000 - Total 2% Rebate
  - On purchases of \$1,000,000 - Total 3% Rebate

STADTLANDERS  
600 PENN CENTER BOULEVARD  
PITTSBURGH, PA

(4%) REBATE

<u>PRODUCT</u>	<u>NDC #</u>	<u>Price/Pkg</u>	<u>Price/Case</u>
PROCRIT (Epoetin alfa) 2,000 u/ml	0062-7402-01	4.80	19.20
PROCRIT (Epoetin alfa) 3,000 u/ml	0062-7405-01	7.20	28.80
PROCRIT (Epoetin alfa) 4,000 u/ml	0062-7400-03	9.60	38.40
PROCRIT (Epoetin alfa) 10,000 u/ml	0062-7401-03	22.80	91.20

Subject to terms and conditions as stated in Pharmaceutical Sales Agreement dated January 7, 1993.

**HIGHLY CONFIDENTIAL**

**MDL-OB100055082**

# EXHIBIT 17



# AstraZeneca Pharmaceuticals

## AGREEMENT

### UROLOGY PRACTICE

This Agreement is made by and between \_\_\_\_\_ ("Urology Practice"), a group located in the State of \_\_\_\_\_, having a place of business at \_\_\_\_\_ and AstraZeneca Pharmaceuticals LP ("AstraZeneca"), a Delaware corporation, having a place of business at 1800 Concord Pike, Wilmington, Delaware 19850.

WHEREAS, Urology Practice is an organized group of physicians ("Participating Physicians"); and

WHEREAS, AstraZeneca is a manufacturer and distributor of pharmaceutical products; and

WHEREAS, Participating Physicians may lawfully dispense prescription drugs which may include AstraZeneca Products to their patients; and

WHEREAS, AstraZeneca desires that certain AstraZeneca Products, as described in Exhibit B ("Products") be designated by Urology Practice as preferred products for use by its Participating Physicians, and Urology Practice desires to contract for the purchase of Products for use by its Participating Physicians.

NOW THEREFORE, Urology Practice and AstraZeneca, in consideration of their respective promises to each other, understand and agree as follows:

- 1. Term; Participating Physicians.** This Agreement shall commence on the first day of the month following the date it is accepted by AstraZeneca (the "Commencement Date") and remain in effect for a period of three (3) years ("Initial Term"). The Initial Term shall be divided into three consecutive twelve-month contract years (each a "Contract Year"). Urology Practice's Participating Physicians that are authorized to purchase Products under this Agreement are listed in Exhibit A attached hereto. During the term of this Agreement, Urology Practice may, with AstraZeneca's consent, add or delete Participating Physicians to or from Exhibit A by giving AstraZeneca prior written notice. If AstraZeneca does not consent to the addition or deletion, it shall notify Urology Practice within thirty (30) days after receipt of such notice; if AstraZeneca does not respond within such time period, then the Participating Physicians(s) will be deemed added or deleted. It is understood and agreed that in entering into and carrying out this Agreement, Urology Practice is acting as an agent for and on behalf of the Participating Physicians. Urology Practice shall inform all Participating Physicians of the terms of this Agreement.
- 2. Preferred Product.** Products included in this Agreement and their National Drug Code ("NDC") numbers are listed in Exhibit B. During the term of this Agreement AstraZeneca may add pharmaceutical products to this list only with prior written consent of Urology Practice. Products may be deleted from the list upon thirty (30) days written notice to Urology Practice. Urology Practice agrees that all Products listed in Exhibit B shall be designated as "Preferred" within thirty (30) days of the date of this Agreement, and shall remain Preferred products for the term of this Agreement. Furthermore, Products shall be

prescribed unless deemed inappropriate by Participating Physicians. Urology Practice certifies that it has, or will implement within sixty (60) days after the date of this Agreement, a program to advise physicians of its preference that Products are to be prescribed to Participating Physician's patients.

3. **Own Use.** Urology Practice represents, to the best of its knowledge, that all purchases of Products requested under this Agreement will be for the use of the patients of Participating Physicians only. It is expressly prohibited to resell, redistribute or group other practices' or physicians' orders hereunder.

4. **Price; Price Protection**

Contract price shall commence no later than forty-eight (48) hours following the date this Agreement is accepted by AstraZeneca. The price per unit of Products hereunder shall be based on the number of units of Products expected to be purchased by Urology Practice on an annual basis ("Annual Purchase Objective"). Initially, the Annual Purchase Objective will be as set forth in Exhibit C. The Annual Purchase Objective may be changed by AstraZeneca as provided in this Section 4. For all purchases of Products, Urology Practice shall be entitled to the percentage discount off the prevailing Average Wholesale Cost ("AWC") of the Product(s) on the first day of each Contract Year as set forth in Exhibit D and corresponding to the applicable Annual Purchase Objective. The formula for converting depots into monthly equivalents is set forth in Exhibit C. AstraZeneca will review the volume of Products purchased by Urology Practice on a quarterly basis to determine whether volume purchased on a pro rata basis is consistent with the Annual Purchase Objective. If AstraZeneca in its sole discretion determines that Urology Practice is unlikely to meet, or is likely to exceed its Annual Purchase Objective, AstraZeneca reserves the right to set a new Annual Purchase Objective for Urology Practice to correspond with Urology Practice's ongoing purchasing pattern. The price for Product(s) shall then be adjusted, if applicable, for the succeeding quarter as set forth in Exhibit D. Urology Practice agrees that it or its Participating Physicians, as appropriate, shall reimburse AstraZeneca for all taxes or other charges, except income and franchise taxes imposed on AstraZeneca's income, which AstraZeneca may be required to pay to any government, whether national, state or local, upon the sale or transportation of Products sold hereunder now in effect or which may be imposed subsequent to the effective date of this Agreement.

For each individual Contract Year during the Initial Term of this Agreement, the price for Products for such Contract Year shall be set on the first day of each such Contract Year. Except as provided in the next sentence, the price for the duration of a Contract Year shall be the AWC in effect on the first day of such Contract Year, less the discount corresponding to the Annual Purchase Objective. The price for Products will not be affected by changes to AWC during that Contract Year, but shall be adjusted to account for any change in discount percentage as a result of a change in the Annual Purchase Objective during such Contract Year as provided in this section.

5. **Purchase/Billing.** All purchases of Products by Urology Practice pursuant to this Agreement shall be made through and directed to AstraZeneca's duly authorized agent, which currently is:

Specialty Distribution Services ("SDS")

1-800-400-4140

Orders for Products may be placed either by Urology Practice or by the individual Participating Physicians. If placed by Urology Practice, Urology Practice must designate the number and type of units to be delivered to each Participating Physician.

After credit approval by AstraZeneca, Urology Practice shall have the following options for invoicing, one of which must be elected upon contract execution:

- ☐ AstraZeneca shall invoice the individual Participating Physicians for the units ordered by or for such Participating Physicians as reported to SDS. Each such Participating Physician will be responsible for payment of the invoice in full pursuant to the provisions set forth on such invoices.
- ☐ AstraZeneca shall invoice the Urology Practice for the units ordered by, or for Participating Physicians as reported to SDS. Urology Practice will be responsible for payment of the invoice in full pursuant to the provisions set forth on such invoices.

This election may be changed by Urology Practice (to be effective no sooner than sixty (60) days after requesting a change) if requested in writing and approved by AstraZeneca in its sole discretion. Regardless of the billing option selected above, AstraZeneca reserves the right to review the credit standing of both Urology Practice and Participating Physicians and implement credit policies and practices (including designating or changing the party or parties to be invoiced) as deemed appropriate in its sole discretion.

6. **Confidentiality.** Urology Practice and Participating Physicians shall keep confidential all of the terms and conditions of this Agreement, and the existence of this Agreement, throughout the duration hereof and for a period of three (3) years following the effective date of expiration or termination.
7. **Records.** Urology Practice and Participating Physicians shall at all times keep and maintain accurate books, records and files relating to the purchase/dispensing of Products and billing and records relating to Products (collectively, the "Records"). During the term of this Agreement and for a period of two (2) years following expiration or termination of this Agreement, upon receipt of written notice from AstraZeneca, Urology Practice and Participating Physicians shall retain and shall make all such Records available for inspection by AstraZeneca or its designated auditors during regular business hours upon twenty (20) days prior written notice in order to confirm Urology Practice's compliance with this Agreement.
8. **Termination.** In the event that a party materially breaches this Agreement, the other party may terminate this Agreement on thirty (30) days prior written notice. No termination under this Paragraph 8 shall affect the rights and obligations of the parties accruing prior to the effective date of such termination. Either party may terminate this Agreement at any time without cause upon sixty (60) days written notice to the other party. AstraZeneca may terminate this Agreement immediately if any change or law or regulation, or interpretation of existing law or regulation would (i) make this Agreement or Discount or a material portion of a party's performance under this Agreement illegal, (ii) prohibit or eliminate, or require a

material change of any Discount offered hereunder, or (iii) require that any material terms of this Agreement be extended to any nonparty.

9. **Notice.** Any notice required or permitted to be given by either party to the other shall be given in writing and shall be delivered either in person or sent by first class mail, postage prepaid, addressed to the other party as follows:

If to Urology Practice:

Urology Practice name goes here  
Street  
City, State, Zip

If to AstraZeneca

AstraZeneca Pharmaceuticals LP  
1800 Concord Pike  
PO Box 15437  
Wilmington, DE 19850-5437  
Attention: Contract Operations

10. **Force Majeure.** Noncompliance with obligations under this Agreement due to force majeure, such as acts of God, acts of governmental authority, war, civil commotion, destruction of production facilities and materials, fire, earthquake or storm, labor disturbances, shortages of materials, failure of public utilities or common carriers, and any other causes, circumstances or contingencies beyond the reasonable control of the parties, shall not constitute a breach of this Agreement.
11. **Assignment.** Urology Practice shall not have the right to assign this Agreement to a third party without the prior written consent of AstraZeneca, which consent shall not be unreasonably withheld. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve Urology Practice or Participating Physicians of responsibility for the performance of any obligations, which have already accrued. This Agreement shall inure to the benefit of and be binding upon each party, its respective successors and permitted assigns.
12. **Compliance with Federal and State Statutes.**
- (a) It is the sole responsibility of Urology Practice and/or Participating Physician to accurately report any discounts under this Agreement to federal, state and private reimbursers (including Medicare and Medicaid) if and as required by applicable law.
  - (b) Urology Practice agrees, warrants and certifies that in performance of this Agreement it will fully comply with the provisions of the Social Security Act, Section 1128(b) (42 U.S.C. §1320a-7b(b)) which, inter alia, prohibit the knowing or willful solicitation or receipt of any remuneration, including rebates, directly or indirectly, in return for purchasing or recommending purchasing any goods, services, or items for which payment may be made in whole or in part under a federal or state public health care program, and which include the full, accurate and timely reporting, where applicable, of any reimbursement made pursuant to a federal or state health care program.

- (c) AstraZeneca hereby represents and warrants that, to the best of its knowledge, the terms of this Agreement do not violate any applicable federal or state anti-kickback laws.
- (d) The discount amounts set forth in this Agreement are subject to change by AstraZeneca in the event they would render AstraZeneca liable for rebate payments higher than the then-established floor under the Omnibus Budget Reconciliation Act of 1990, as amended from time to time.

**13. Miscellaneous.**

- (a) This Agreement will be governed in all respects, including validity, interpretation, construction and performance, in accordance with the laws of the State of Delaware without regard to its choice of laws provisions.
- (b) This Agreement constitutes the entire contract between Urology Practice and AstraZeneca with respect to the subject matter hereof, and the terms and conditions set forth herein may only be modified or amended in a subsequent writing signed by both parties. In the event AstraZeneca and Urology Group or any of the Participating Physicians shall have in effect on the Commencement Date, an agreement with respect to the purchase of Products, such agreement shall be terminated as of the Commencement Date of this Agreement.
- (c) No waiver by either Urology Practice or AstraZeneca with respect to any breach or default or of any right or remedy and no course of dealing shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing signed by the party to be bound.
- (d) The parties to this Agreement are independent contractors, and nothing herein shall be construed to the contrary. Neither party shall assume or create any obligations or responsibilities express or implied, on behalf of the other party, or bind the other party in any manner or thing whatsoever.

- (e) This Agreement may not be amended, altered or modified in any manner except in a writing signed by both parties hereto.

This Agreement is executed in duplicate by the respective parties as of the date first above written.

**AstraZeneca Pharmaceuticals LP**

**Urology Practice**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Michael P. Diggin

Print Name: \_\_\_\_\_

Title: Director, Contract Operations

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

To be completed by AstraZeneca -

Contract Price Effective Date: \_\_\_\_\_

Zoladex Buy Group Annual Contract

## EXHIBIT A

Participating Physicians  
(to be completed by Urology Practice)

Ship to

Bill to

Dr.'s Name:  
Practice Name:  
Address:  
City, State, Zip:  
DEA#/Exp. date:  
ME#/Exp. date:

Dr.'s Name:  
Practice Name:  
Address:  
City, State, Zip:  
DEA#/Exp. date:  
ME#/Exp. date:

Dr.'s Name:  
Practice Name:  
Address:  
City, State, Zip:  
DEA#/Exp. date:  
ME#/Exp. date:

Dr.'s Name:  
Practice Name:  
Address:  
City, State, Zip:  
DEA#/Exp. date:  
ME#/Exp. date:

Dr.'s Name:  
Practice Name:  
Address:  
City, State, Zip:  
DEA#/Exp. date:  
ME#/Exp. date:

## **EXHIBIT B**

<b><u>PRODUCT</u></b>	<b><u>DOSAGE STRENGTH</u></b>	<b><u>NDC#</u></b>
ZOLADEX <sup>®</sup> (goserelin acetate implant)	3.6 mg depot	0310-0960-36
ZOLADEX <sup>®</sup> (goserelin acetate implant)	10.8 mg depot	0310-0961-30



## **EXHIBIT C**

The Annual Purchase Objective is: \_\_\_\_\_ Monthly Equivalents.

Monthly Equivalents:

One 3.6 mg depot equals one monthly equivalent.

One 10.8 mg depot equals three monthly equivalents.

**EXHIBIT D**

<b>Annual Purchase Objective In <u>Monthly Equivalents</u></b>	<b>Discomt Off Current AWC</b>	
	<b><u>3 Month Depot</u></b>	<b><u>1 Month Depot</u></b>
1,200 - 1,999	33%	32%
2,000 - 2,399	35%	34%
2,400 - 3,199	38%	37%
3,200 - 3,599	40%	39%
3,600 - 4,399	42%	41%
4,400 - 4,799	45%	44%
4,800 - 5,999	47%	46%
6,000 +	50%	49%

**Monthly Equivalents:**

One 3.6 mg depot equals one monthly equivalent.

One 10.8 mg depot equals three monthly equivalents.

# EXHIBIT 18



7500 North Natchez Avenue, Niles, Illinois 60714-3804 • Telephone 1 800 547-3869

February 2, 1995

Fallon Clinic Pharmacy  
630 Plantation Street  
Worcester, MA 01605

ATTN: Burt Orland  
Director of Pharmacy

Per your request, Warrick Pharmaceuticals offers the following product(s)/price(s) effective March 1, 1995 through December 31, 1995 to:

Fallon Clinic Pharmacy  
630 Plantation Street  
Worcester, MA 01605

(hereafter "customer")

under the terms and conditions herein and in the attachments listed below as such may be changed from time to time on thirty (30) days notice:

RETURNED GOODS POLICY #21  
PRIME VENDOR PROGRAM #25  
CONFIDENTIALITY #35  
AUDIT #36  
FORCE MAJEURE #37

PRODUCTS

ALBUTEROL SULFATE SOL, 25x3ML U/D	59930-1500-8	\$11.50
ALBUTEROL SULFATE SOL, 20ML	59930-1515-4	6.95
ALBUTEROL SYRUP	59930-1510-5	7.95
CLOTRIMAZOLE CREAM, 15GM	59930-1570-1	4.75
CLOTRIMAZOLE CREAM, 30GM	59930-1570-2	8.50
CLOTRIMAZOLE CREAM, 45GM	59930-1570-3	10.30

Warrick reserves the right to increase the contract price of offered products by no more than five percent (5%) per calendar year.

Payment terms are: 2% 30 days from date of invoice: net 45 days from date of invoice. Min. order \$500.00, Federal Employer #22-3220986.

If this offer is acceptable, please indicate your approval by signing below and returning both originals to this office. Upon receipt a signed copy will be returned for your records. THIS OFFER WILL REMAIN IN EFFECT FOR SIXTY (60) DAYS FROM THIS DATE. WRITTEN ACCEPTANCE MUST BE RECEIVED BY WARRICK BEFORE EXPIRATION OF THE OFFER. This Agreement

SP 0001454  
CONFIDENTIAL  
ATTORNEYS' EYES ONLY

WAR0043141  
Highly Confidential

FALLON CLINIC  
7/1/96 THROUGH 6/30/98  
WARRICK OFFER  
ADDENDUM

<u>PRODUCT</u>	<u>NDC</u>	<u>DESCRIPTION</u>	<u>PRICE</u>	<u>THERAPEUTIC EQUIVALENCE</u>
<u>albuterol sulfate</u>				
USP Inhalation Sol 0.083%	1500-8	25 x 3ml	\$0.30	AN
USP Solution for Inhalation	1515-4	20ML	0.30	AN
USP Syrup, 2 MG/5ML	1510-5	16oz	0.25	AA

SP 0001455  
CONFIDENTIAL  
ATTORNEYS' EYES ONLY

WAR0043142  
Highly Confidential



7500 North Natchez Avenue, Niles, Illinois 60714-3804 • Telephone 1 800 547-3869

ATTACHMENT #21

**RETURN GOODS POLICY**

All wholesaler returns must have the prior approval from Customer Services and be forwarded *prepaid* to 1011 Morris Avenue, Union, New Jersey 07083.

All retail account returns for credit over \$1,500 must have the prior approval of an authorized representative and be forwarded prepaid to 1011 Morris Avenue, Union, New Jersey 07083. Returns under \$1,500 can be approved by calling Customer Service, 1-800-547-3869. All returns to receive credit must be accompanied with a completed Return Goods Authorization form which will be supplied by Warrick. Warrick reserves the right to return any product that is received without a Return Goods Authorization form completed.

- a. Credit will be allowed on unopened and undamaged packages at current net prices as of date of return (except merchandise sold on a special promotion offer, in which case the invoice price will apply) as follows:
  - 1) Prescription product returns made within 3 months after a price increase will be credited at the price prior to the price increase.
  - 2) Dated products-full credit up to one year after expiration. No credit for products returned older than one year past expiration.
  - 3) Retail accounts can make returns directly to Warrick. The name and address of the Wholesaler that the return is to be credited through must be indicated on the Return Goods Authorization form. All conditions stated above apply to retail accounts.
  - 4) Warrick reserves the right to return or destroy products which are not returned in compliance with this policy without giving credit.
- b. The above adjustments will appear on Warrick's credit memoranda as follows:
  - 1) Items given full credit will show as individual line extensions.
  - 2) Items currently in the for which only partial credit has been allowed will be shown as separate line extensions.
  - 3) Discontinued items receiving partial credit will be included under "Miscellaneous Product."
- c. Manufacturers are expressly forbidden (under the Federal Food, Drug, and Cosmetic Act) from returning expired dated items to customers. Such items returned to Warrick will be destroyed. Warrick also reserves the right to destroy without credit, packages that are unfit or unsafe for sale or do not comply with applicable law.

6P 0001456  
CONFIDENTIAL  
ATTORNEYS' EYES ONLY

- d. Consideration will be given to adjustments for losses suffered in a natural disaster (flood, hurricane, tornado, etc.) not covered by insurance. Your Warrick Representative will be glad to assist you in such emergencies.
- e. Our Representatives are not permitted to modify any of the above policies.

This returned goods policy does not apply to goods returned by persons other than the original retailer, wholesaler or hospital purchaser of the goods, or to goods which have been repacked or are in other than original Warrick containers.

ATTACHMENT #25



7500 North Natchez Avenue, Niles, Illinois 60714-3804 • Telephone 1 800 547-3869

PRIME VENDOR PROGRAM

Warrick Pharmaceuticals agrees to make bid prices available through designated wholesaler(s). In designating a wholesaler as prime vendor, the customer agrees to honor the terms and conditions herein. These are as follows.

- Warrick requires written notification from the account naming the wholesaler(s) designated as prime vendor(s).
- A listing of participating hospitals including complete address and DEA number must be provided.
- No institution can be added to a group purchase contract without Warrick's approval. Warrick reserves the right to reject or accept new group members and remove current members at Warrick's sole discretion. Thirty days after notification of approval by Warrick, new members are eligible for chargeback purchases.
- Any wholesaler "Service Fee" is determined between the participating Wholesaler and the Customer and/or Buying Group. Any Wholesaler's Service Fee is in addition to the contract prices of Warrick Corporation. Warrick Pharmaceuticals will not participate in the negotiations of any such Service Fee between the wholesaler and the customer. Any charges for shipping cost will be the responsibility of the Wholesaler and the Customer.
- Return of bid price merchandise from the institution must be made directly by the institution to Schering. Credit will be issued through the wholesaler via a credit memorandum. Wholesaler shall notify Warrick immediately of any bid price merchandise that is returned to the wholesaler, for whatever reason, by an institution. Wholesalers shall not distribute or sell bid price merchandise returned by an institution without Warrick's written consent.
- Account understands and agrees that any product purchased, either direct from Warrick or through a prime vendor, at contract bid prices shall be for the Institution's "own use" as defined by the United States Supreme Court in Portland Retail Druggists' Association, Inc. v Abbott Laboratories et al (425 U.S. 1 (1976)).

Notification of designated wholesaler(s) should be mailed to:

Warrick Pharmaceutical  
Attn: Cassandra Bragg, C/B Dept.  
P.O. Box 3193  
Union, NJ 07083-1993

Phone: 908-820-4806 Fax: 908-820-4848

SP 0001458  
CONFIDENTIAL  
ATTORNEYS' EYES ONLY

WAR-25

WAR0043145  
Highly Confidential





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7500 North Natchez Avenue, Niles, Illinois 60714-3804 • Telephone 1 800 547-3869

ATTACHMENT #35

**CONFIDENTIALITY**

Customer shall maintain the confidentiality of all pricing, marketing or other Warrick product information, including this agreement it's terms and conditions throughout the duration hereof and for a period of three (3) years following the effective date of expiration or termination.

WAR-35

SP 0001459  
CONFIDENTIAL  
ATTORNEYS' EYES ONLY

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**WAR0043146**  
**Highly Confidential**



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7500 North Natchez Avenue, Niles, Illinois 60714-3804 • Telephone 1 800 547-3869

ATTACHMENT #36

**AUDIT**

Customer shall, at all times, keep and maintain accurate books, records and files with respect to any information relative to the dispensing, administration or sale of Warrick's products. Upon customer's receipt of written request from Warrick customer shall make such information available, through pharmacies or otherwise, in a manner mutually satisfactory to Warrick and customer, for inspection by Warrick's representatives or its designated auditors during regular business hours.

SP 0001480  
CONFIDENTIAL  
ATTORNEYS' EYES ONLY

WAR-36

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WAR0043147  
Highly Confidential



7500 North Natchez Avenue, Niles, Illinois 60714-3804 • Telephone 1 800 547-3869

ATTACHMENT #37

FORCE MAJEURE

Noncompliance with the obligations of this Agreement due to force majeure, laws or regulations of any government, war, civil commotion, destruction of production facilities and materials, fire, earthquake or storm, labor disturbances, shortage of materials, failure of public utilities or common carriers, and any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.

WAR-37

SP 0001461  
CONFIDENTIAL  
ATTORNEYS' EYES ONLY

WAR0043148  
Highly Confidential

# EXHIBIT 19



MAY 19 1998

Memo

To: R. Kapur  
From: B. Michael Kennedy  
Subject: Rite-Aid Chargeback Program  
Reference:

Date: May 15, 1998  
Copies: J. Bencic  
H. Weintraub  
P. Malcolm

As we briefly discussed, Warrick has maintained a chargeback program for Rite-Aid since 1995, but for which there is no contract. The program permits Rite-Aid to pay the wholesale price to wholesalers and then submit a chargeback to Warrick for the difference between the price paid to the wholesaler and the contract price for which Rite-Aid is entitled. Ordinarily, it is the wholesaler who submits the chargeback to Warrick, but Rite-Aid does not want the wholesalers to know its prices. Consequently, they submit the chargeback.

Because this is an exception to Warrick's Chargeback Program Terms and Conditions, and because there is no contract, my staff has no authorization to pay the chargebacks to Rite-Aid. Consequently, I must ask that you sign below, indicating your approval of this arrangement and thereby authorizing us to continue processing these chargebacks from Rite-Aid.

Thank you for your support.

Approved

R. Kapur

A handwritten signature in dark ink, appearing to be 'R. Kapur', written over a horizontal line.

A handwritten signature in dark ink, appearing to be 'Ant', written below the first signature.

CONFIDENTIAL  
WP00007148A

0217 (M/91)

WAR0029661  
Highly Confidential

# EXHIBIT 20

## RITE-AID CORPORATION

Note: Rite-Aid wishes to keep its pricing a secret and therefore, buys from the wholesaler at the wholesaler's price and then charges back Warrick for the difference in the Rite-Aid contract for the product.

Product	Period	Wholesaler	Wholesaler's Price	Rite-Aid's Price	Difference	Units	Credit
Albuterol 20 mL	7/20/97 - 7/26/97	Amerisource	7.42	4.01	3.41	153	521.73
Albuterol 25 x 3 mL	7/20/97 - 7/26/97	Amerisource	10.00	6.00	4.00	650	2,600.00
Albuterol Inhaler 17g	7/20/97 - 7/26/97	Amerisource	5.31	3.83	1.48	476	704.48
Albuterol Refill	7/20/97 - 7/26/97	Amerisource	5.00	3.50	1.50	49	73.50
Clofimazole 15gm	7/20/97 - 7/26/97	Amerisource	3.75	1.80	1.95	16	31.20
Clofimazole 30gm	7/20/97 - 7/26/97	Amerisource	6.43	3.15	3.28	29	95.12
Clofimazole 45gm	7/20/97 - 7/26/97	Amerisource	7.00	3.75	3.25	9	29.25
Perphenazine 2mg	7/20/97 - 7/26/97	Amerisource	14.10	9.20	4.90	17	83.30
Perphenazine 4mg	7/20/97 - 7/26/97	Amerisource	19.75	12.62	7.13	7	49.91
Perphenazine 8mg	7/20/97 - 7/26/97	Amerisource	24.26	16.46	6.80	12	105.60
Perphenazine 16mg	7/20/97 - 7/26/97	Amerisource	33.25	20.75	12.50	6	75.00
Griseofulvin 250mg	7/20/97 - 7/26/97	Amerisource	40.82	25.28	15.34	41	828.94
Griseofulvin 330mg	7/20/97 - 7/26/97	Amerisource	37.22	33.10	4.12	19	78.28
Glyburide 1.25mg	7/20/97 - 7/26/97	Amerisource	5.68	2.35	3.33	5	16.65
Glyburide 2.50mg	7/20/97 - 7/26/97	Amerisource	8.12	3.11	5.01	10	50.10
Glyburide 5mg/100	7/20/97 - 7/26/97	Amerisource	12.34	4.50	7.84	18	125.44
Glyburide 5mg/500	7/20/97 - 7/26/97	Amerisource	55.55	22.00	33.55	9	301.95
Theophylline 100mg/100	7/20/97 - 7/26/97	Amerisource	96.29	30.40	65.89	4	263.56
Theophylline 200mg/1000	7/20/97 - 7/26/97	Amerisource	2.83	1.70	1.13	4	4.52
Theophylline 300mg/1000	7/20/97 - 7/26/97	Amerisource	32.22	15.50	16.72	1	16.72
Theophylline 450mg/100	7/20/97 - 7/26/97	Amerisource	37.78	21.50	16.28	28	455.84
			11.80	10.62	1.18	9	10.82
						<u>1,570</u>	<u>6,321.71</u>

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**RITE-AID CORPORATION**

Note: Rite-Aid wishes to keep its pricing a secret and therefore, buys from the wholesaler at the wholesaler's price and then charges back Warrick for the difference in the Rite-Aid contract for the product.

Product	Period	Wholesaler	Wholesaler's Price	Rite-Aid's Price	Difference	Units	Credit
Albuterol 20 mL	5/04/97 - 5/10/97	Amerisource	7.42	4.01	3.41	289	1,019.59
Albuterol 25 x 3 mL	5/04/97 - 5/10/97	Amerisource	10.00	6.00	4.00	414	1,656.00
Albuterol Inhaler 17g	5/04/97 - 5/10/97	Amerisource	5.31	3.83	1.48	559	827.32
Albuterol Refill	5/04/97 - 5/10/97	Amerisource	5.00	3.50	1.50	58	84.00
Clotrimazole 15gm	5/04/97 - 5/10/97	Amerisource	3.75	1.80	1.95	13	25.35
Clotrimazole 30gm	5/04/97 - 5/10/97	Amerisource	6.43	3.15	3.28	12	39.36
Clotrimazole 45gm	5/04/97 - 5/10/97	Amerisource	7.00	3.75	3.25	9	29.25
Perphenazine 2mg	5/04/97 - 5/10/97	Harvard	15.79	9.20	6.59	8	52.72
Perphenazine 4mg	5/04/97 - 5/10/97	Harvard	21.89	12.62	9.27	10	92.70
Perphenazine 8mg	5/04/97 - 5/10/97	Harvard	25.56	15.45	10.11	4	40.44
Perphenazine 16mg	5/04/97 - 5/10/97	Harvard	33.25	20.75	12.50	3	37.50
Griseofulvin 250mg	5/04/97 - 5/10/97	Amerisource	40.62	20.00	20.62	37	782.94
Griseofulvin 330mg	5/04/97 - 5/10/97	Amerisource	37.22	29.48	7.74	11	85.14
Theophylline 100mg/100	5/04/97 - 5/10/97	Amerisource	2.83	1.70	1.13	17	19.21
Theophylline 300mg/1000	5/04/97 - 5/10/97	Amerisource	37.78	21.50	16.28	27	439.56
Theophylline 450mg/100	5/04/97 - 5/10/97	Amerisource	11.80	10.62	1.18	15	17.70
						<u>1,494</u>	<u>5,228.76</u>

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